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In re Application of
KERN, Andrea *et al*
U.S. Application No.: 08/637,752
PCT No.: PCT/EP94/03564
Int. Filing Date: 28 October 1994
Priority Date: 28 October 1993
Attorney Docket No.: 8484-013-999
For: ADENO-ASSOCIATED VIRUS - ITS
DIAGNOSTIC USE WITH EARLY
ABORTION

DECISION

This decision is in response to applicants' "Renewed Petition Under 37 CFR 1.137(b)" filed 13 December 2000. The petition fee has been paid.

BACKGROUND

On 28 November 2000, a decision dismissing applicants' renewed petition under 37 CFR 1.137(b) was mailed because applicants failed to meet the requirement of 37 CFR 1.137(d). Specifically, applicants did not provide a copy of the computer docket record for the above-captioned file needed to prove nonreceipt of the 15 February 2000 decision causing the delay to respond.

On 13 December 2000, applicants submitted the instant petition along with a copy of the computer docket record for the above-captioned file.

DISCUSSION

As previously stated, the 15 February 2000 decision gave applicants two months to provide a proper response, however, applicants did not respond until 18 September 2000. Applicants claim that the decision was never received via first class mail and that they did not learn of the decision until on or about 20 August 2000.

To prove nonreceipt of an Office communication, applicants must provide: (1) a statement from the practitioner declaring that the Office communication was not received by the practitioner; (2) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and, (3) a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and

referenced in practitioners' statement. Applicants previously satisfied items (1) and (2).

With regards to item (3), in the prior petition applicants submitted copies of the law firm's mail logs from 15 February 2000 through 31 May 2000. In the instant renewed petition, applicants have provided a copy of the computer docket record for the above-captioned file. A review of the record titled "Prosecution and Maintenance Docket" verifies that there is no indication of receipt of the 15 February 2000 decision. The record is dated 12 December 2000 and contains the correct attorney, attorney docket number and title. This satisfies the requirements of item (3).

Accordingly, applicants have successfully demonstrated that the 15 February 2000 for the above-captioned application was not received.

Petition to Revive

In the prior petition, applicants satisfied all the requirements of 37 CFR 1.137(b). However, applicants failed to meet the requirements of 37 CFR 1.137(d) because the renewed petition was not considered timely.

Nevertheless, since applicants have successfully proven nonreceipt of the 15 February 2000 decision, the requirements of 37 CFR 1.137(d) have also been successfully met.

CONCLUSION

For the reasons discussed above, applicants' renewed petition to revive the above-captioned application under 37 CFR 1.137(b) is **GRANTED**.

The declaration submitted 02 May 1996 was not executed.

Accordingly, the application is being forwarded to the United States Designated/Elected Office for further processing including mailing a Notification of Missing Requirements (Form PCT/DO/EO/905) for failing to provide a declaration in compliance with 37 CFR 1.497 (a) and (b).



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